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IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L 2001/B 051

BETWEEN                                    **COURTENAY FRANCIS RAYMOND  
BARNETT**                                    **PLAINTIFF**

A N D                                    **THE ATTORNEY GENERAL  
FOR JAMAICA**                                    **DEFENDANT**

**Phillip Dayle for Plaintiff**

**Garfield Haisley, instructed by Director of State Proceedings for  
Defendant.**

Heard:    18<sup>th</sup>, 19<sup>th</sup>, 20<sup>th</sup>, 21<sup>st</sup>, 22<sup>nd</sup> February,  
and 20<sup>th</sup> May, 2002.

**COOKE, J.**

The plaintiff Courtenay Francis Raymond Barnett, a Jamaican National, is an attorney-at-law who resides and practices in the Turks and Caicos Islands. He is the owner of a security company named Jamaica Central Security Association. He is chairman of the board of directors of this company and directs policy for it. This company is said to employ seventy security guards. This security company is located at 12 Eureka Road in Kingston. He seeks damages for: -

1. False imprisonment.
2. Malicious prosecution
3. Assault
4. Exemplary damages
5. Aggravated damages.

The evidence on behalf of the plaintiff as to the factual circumstances of the case was given by the plaintiff, Lester Broderick and Arlene Harrison-Henry. I will review their evidence in that order.

#### **Evidence of Plaintiff**

On the 20<sup>th</sup> January, 2001 at about 10 p.m. he was driving on his way to Kingston when at the Rosemount round-about just outside of Linstead in St. Catherine, his vehicle hit the rear of the vehicle driven by Phillip Brown which caused the latter's vehicle to collide with the rear of another vehicle being driven by Beverly Hutchinson. He told the drivers of those vehicles that there was "no problem". He was requested to sign a document accepting liability. This for 'insurance purposes' he would not do it. He said Hutchinson became belligerent and the police was called. Det. Sgt. Errol Williams arrived at the scene. Hutchinson and Sgt. Williams appeared to be quite chummy. He, the plaintiff took Sgt. Williams to his car told him he was an attorney-at-law; the owner of a security company and that he had a firearm in the car. At that time

he gave Sgt. Williams the car papers and a copy of a firearm user's permit. Both the car papers and a copy firearm user's permit were in an envelope. He told Sgt. Williams that the 'Red Book' that is the official licence was at the Half Way Tree Police Station being renewed. At the urging of Hutchinson he was asked by Sgt. Williams to attend at the Linstead Police Station. Brown and Hutchinson also went to that station. At the station although he told Sgt. Williams it was unnecessary, he was placed in a cage. At the station was Cpl. Winfield Matthews. The plaintiff said he told Cpl. Matthews that he was an attorney-at-law and he was owner of a security company and that he could verify that by looking in the yellow pages. He said Matthews called his company. Then some time elapsed after which Sgt. Williams came out and spoke to Brown and Hutchinson thus: -

"Two a you soon can go home disaman nah see daylight."

To continue the plaintiff's narrative, at a particular point he was asked to accompany officers to his vehicle to search it. He was draped in his "pants back". The trunk of his car was opened - therein were files and papers which the police scattered all over and prompted the comment from Sgt. Williams that

"a fraud man this, look how much paper."

The plaintiff was then returned to the cage. Lester Broderick, firearms dispatcher and Louis Davis the General Manager of the plaintiff's security

company arrived at the Linstead Police Station. Broderick tried to tell Sgt. Williams that he had a licence based on the plaintiff's licence. However Sgt. Williams dismissed him remarking that Broderick was trying to tell him how to do police work. Some time after Broderick came, he said he had found a document relevant to the permit. This document had purportedly been found in the plaintiff's car. After this document was produced Cpl. Matthews opened the cage indicating that he wished to speak to the plaintiff. The latter was taken to a private room. The plaintiff asked if he was being charged and if so under what provision of Law. At this point Cpl. Matthews told the plaintiff that Sarge had ten children. He told Cpl. Matthews that he was a professional and could only have one, at which stage Matthews said maybe 'Sarge' only had six children. When he was in the cage he had asked to speak with his Attorney-at-Law, Arlene Harrison-Henry. He spoke to her requesting that she bring the firearms file of the company. The plaintiff recounted that after the conversation with Cpl. Matthews the latter said he was too tough 'better talk with Sarge'. He was taken to the office of Sgt. Williams where he was informed that he would be charged. Subsequently he was taken from the cage and put into cell. He was bailed about 10 a.m. on the 21<sup>st</sup> January, 2001. On the 24<sup>th</sup> January, 2001 the case against him for illegal possession of firearm was withdrawn at the Resident Magistrates' Court held in Linstead.

Under cross examination the plaintiff said: -

“I myself did not produce a valid licence permit. My agent did not produce a current permit. It was produced at trial hence reason for case being dropped.”

The plaintiff denied that the car papers he produced were not for the car he was then driving. He denied that he was uncooperative to the police.

**Lester Broderick**

After 10 p.m. on 20<sup>th</sup> January, 2001 he received a call at home from his office. The general manager Davis came to his house and they set off for the Linstead Police Station where they arrived at about 11:30 p.m. He spoke to Sgt. Williams at about ~~midnight~~ and told him that he had issued the plaintiff with a .38 Colt revolver and at the same time gave him a current licence. This he had done on the morning of the 20<sup>th</sup> January 2001. To this information Sgt. Williams replied.

“You know anything about police duty you come to instruct police duty or what?”

He, Broderick, tried to show his copy of a permit which included the .38 colt issued to the plaintiff but Sgt. Williams did not wish to see it. Broderick then left and with an unnamed officer went to the plaintiff's car where on the back seat the licence he had issued to the plaintiff was found. The unnamed

officer showed this copy to Sgt. Williams who looked at it and said he could do nothing about it "for 'Sarge' gone home and can't do anything about it until morning."

**Arlene Harrison Henry**

Arlene Harrison Henry is an experienced Attorney at Law. At 12:15 a.m. on the 21<sup>st</sup> January 2001 she was at her mother's home when she received a call. She spoke to the plaintiff who asked her to get the entire firearm's file for the company. She went to 12 Eureka Crescent and picked up this file "and in particular the tax receipt for the firearm in question" – this she said showed money paid in respect of renewal of a licence. She got to the Linstead Police Station sometime after one. She spoke to Sgt. Williams who she knew for years. She asked him how it was that a policeman outside had told her that a photocopy of a licence had been shown to him yet Barnett was in a cell? She said Williams enquired as to the identity of that officer to which she responded that she did not know his name but in any event she had the entire file. She then handed the file and a tax receipt to Sgt. Williams in his office. Sgt. Williams then told her that nothing could be done as the Inspector was not there and he was not signing any bail bonds. Further, Sgt. Williams flatly refused to take the plaintiff from cell. Sgt. Williams refused her entreaty to "right the wrong" that had been visited upon her client. The plaintiff was removed from

cell at 4:30 a.m. On the 24<sup>th</sup> at the court in Linstead the charges were withdrawn against the Plaintiff. It is to be noted that this witness despite being in possession of the company's firearms file did not speak to that file having a current licence for the plaintiff.

Under cross-examination Mrs. Arlene Harrison Henry denied that she arrived at the Linstead Police Station at 4:30 a.m. of the 21<sup>st</sup> January 2000. She was quite guarded as to the contents of the file. It would appear that she did not scrutinise the documents within the file. She could not say whether the tax receipt was the relevant one. She based her opinion "on information and instructions" presumably from those who prepared and/or handed the file to her. Apparently the tax receipt was placed on top of the contents of the file.

Four witnesses gave evidence on behalf of defendant. Sgt. Errol Williams and Cpl. Winfield Matthews and Phillip Brown spoke as to the factual situation and Sgt. Kenneth Matthews as to the issuance of firearm licences/permits.

**Sgt. Errol Williams**

He was on patrol duty on the 20<sup>th</sup> January 2001 when at about 10 p.m. he received a radio call from his station that three vehicles were involved in an accident at the Rosemount roundabout. He proceeded to the scene. There the

plaintiff was being blamed by the other parties. The plaintiff was talkative and aggressive. He suggested that all three parties should go to the station to settle "the paperwork." He traveled with parties and left them with Cpl. Winfield Matthews, and continued on his patrol. He said that at the scene he was neither shown nor did he request any documents from the plaintiff. He returned to the station at about 11:30 p.m. when he was told by Cpl. Matthews that the plaintiff had a firearm and it contained three live rounds. Further he was informed that the plaintiff had produced a document, in relation to the firearm, which had expired in 1997. Matthews further told him (Sgt. Williams) that the plaintiff had produced papers for a Mazda motorcar while the plaintiff's car was a Nissan. Sgt. Williams said he asked the plaintiff what work he did but latter did not reply. The plaintiff was further asked if he had a current licence to which he replied that his lawyer would deal with the matter. After inspecting the photocopy of the 1997 licence, Sgt. Williams asked the plaintiff if he was a security guard to which there was no reply. It is further the evidence of Sgt. Williams that the plaintiff said that he got the firearm from a security guard in St. Ann. Because, according to Sgt. Williams the plaintiff was being uncooperative he ordered the plaintiff's car to be further searched. Three unexpended rounds were found in the front section of the car near to the gear lever. It was at this point that Sgt. Williams instructed Cpl. Matthews to arrest



and charge the plaintiff in respect of the firearm. He then left for his patrol and at about 4:30 a.m. he received a call from his station that Mrs. Arlene Harrison-Henry was at the Station Office. It is Sgt. Williams' evidence that she did not hand him any documents nor did she assert that the plaintiff had a licence. She was only concerned with the grant of bail. According to Sgt. Williams the plaintiff was not put in the cage before he was arrested.

### Cpl. Winfield Matthews

On the night in question Sgt. Williams came to ~~the station along with the~~ plaintiff, Brown and Hutchinson. Sgt. Williams gave him instructions to deal with the matter and left. When he (Matthews) asked for the ~~particulars~~ for his car, the plaintiff produced papers for another car from an envelope. At this, the plaintiff said he thought he had put the right document in the envelope. At this point the plaintiff told Matthews that he (plaintiff) had left a firearm in his car. Together they went to the car and a .38 colt revolver was retrieved from beside the driver's seat near to the emergency brake. The cylinder of the revolver was open and contained three unexpended rounds. When questioned about the permit the plaintiff took from his pocket (can't say which) a photocopy of a licence which had expired on the 31<sup>st</sup> March, 1997. Matthews asked the plaintiff if he had a current licence to which the answer was in the negative.

About thirty minutes later Sgt. Williams returned to the station and Matthews reported to him what had transpired. This led to a further search of the Plaintiff's vehicle where three rounds of ammunition were found. On returning the guard room the plaintiff asked Matthews to allow him to make a telephone call to get the correct papers. Matthews granted the request. When Sgt. Williams instructed him to arrest and charge the plaintiff, the plaintiff is reported to have said

“Mi a lawyer and me know Law”

The plaintiff then made a further request for a telephone call – this time to his lawyer Miss Arlene Harrison-Henry. This he was granted. This was about 12:30 going on to 1 a.m. It is Matthews' evidence that Mrs. Henry came to the station at about 4 a.m. This witness could not recall if any of the employers of the plaintiff's security company came to the station. He was also engaged in monitoring the cells. He denied the conversation sworn to by the plaintiff that he had spoken to the plaintiff about the number of children that “Sarge” had. In cross-examination Matthews said he was aware that a man had brought the correct papers for the car as the station guard had said the papers were correct.

**Phillip Brown**

He described himself as a self-employed accounting clerk. He recounted how the accident happened. He said he requested papers of the plaintiff but the

latter refused to produce any documents. Hutchinson also failed in her request. The plaintiff said that the matter could be easily resolved. According to Brown the situation was becoming tense – as Hutchinson was not as tolerant as he was. Accordingly, he thought it best to call the police – which he did. It is Brown's evidence that on the arrival of the police the plaintiff still refused to produce his papers and all went to the station at invitation of the police – It is further Brown's evidence that the plaintiff was placed in the holding area after the firearm was retrieved. He said he heard the plaintiff making a call for papers to be brought and more than an hour after the call three persons came and produced a file and had conversation with the station guard. At the station the plaintiff produced an envelope which when he scrutinized the contents he discovered that car papers were not the relevant papers. He also noticed a document pertaining to firearm which he brought to the attention of the station guard. He said he brought the document pertaining to firearm to Sgt. Williams's attention. He (Brown) left the station at about 1 a.m. He does not recall the plaintiff ever saying he was either an attorney-at-law or the owner of a security firm. He further did not recall any of the men who came with the papers saying one of them had found any document in the plaintiff's car pertaining to a firearm permit. It was his impression that Williams seemed agitated and that the plaintiff was being evasive.

**Sgt. Kenneth Matthews**

This witness is a Firearms Clerk at the Constant Spring Police Station. His evidence pertained to the procedure in his division. Let me state immediately that the plaintiff's company is not in his division. However his evidence is not without value. I accept his evidence in that it reflects the general procedure. He was a Firearm's Clerk between 1976 to 1977 and since 2001. There is the 'Red Book'. This is a firearm user's licence. This expires on the 31<sup>st</sup> of March every year. The owner of a security company would have Red Book(s) depending on the number of firearms in possession of the company as one Red Book might not have enough space to record all the firearms. In the Plaintiff's evidence he said that his Red Book was at the Half Way Tree Police Station for renewal of the Licence and to have additional firearms added to the licence. The procedure according to this witness is that for the renewal of firearm licenses every holder must bring in the relevant firearms along with licence/permit/certificate so that the Firearms Clerk can verify the authenticity of the transaction. Next the applicant is given a letter which enables such applicant to purchase a tax receipt i.e. to pay the requisite monies. This tax receipt does not refer to any particular firearm(s). The applicant is then required to return to the Firearms Clerk with the tax receipt

and the current Red Book. During the interval between the handing over of the tax receipt and the Red Book and the renewal of the licence in the Red Book the applicant is issued with a temporary document which authorizes the possession and use of a firearm(s). So at no time would a licenced firearm holder be without documentary approval. In the instant case the plaintiff should have had either a current Red Book or the temporary document pending the renewal of the licence in the Red Book. What the plaintiff produced was a photocopy of two Red Books joined together relating to an expiry date of 31<sup>st</sup> March, 1997.

In the statement of claim the plaintiff in paragraph 1 stated that he was "the holder of a legal firearms licence." In paragraph 5 it is averred that:

"At the scene of the accident, the Plaintiff produced papers for his motor vehicle, to which was attached a copy of his firearm licence, to Detective Sergeant Williams and to Corporal Winfield Matthews.

Then at paragraph 7 it is pleaded

"At the Linstead Police Station on the aforesaid date despite Detective Sergeant Williams and Corporal Winfield Matthews having knowledge and proof of the currency and lawfulness of the Plaintiff's firearm licence, upon the instructions of Detective Sergeant Williams the Plaintiff was unlawfully arrested, charged and incarcerated at the Linstead Police Station lock up.

In respect of the Claim for malicious prosecution paragraph 8 reads:

Detective Sergeant Williams maliciously and unlawfully laid false charges against the Plaintiff for illegal possession of firearm and ammunition requiring the Plaintiff to attend at the Resident

Magistrates Court on January 24<sup>th</sup>, 2001 when the Crown was forced to withdraw the said false charges against the Plaintiff.

Well, the plaintiff in this case has not produced an iota of evidence that at the relevant time of his arrest and charge he was the holder of a current firearms user's licence. The court repeatedly indicated during the trial that a critical question was. "Did the plaintiff have a firearm licence or not?" Apparently the force of this question was not lost on counsel who appeared for the plaintiff – for on two occasions there were adjournments granted which I assumed were to enable the plaintiff to produce evidence of being in possession of the requisite licence. None has been produced. If the plaintiff had a licence why has he denied the court a view of it? Such production is simplicity personified. Be that as it may, the plaintiff chose to discharge its burden of proving that he had a licence in two ways. Firstly, it was sought to argue that the withdrawal of case by the crown on January 24<sup>th</sup>, 2001 was proof enough that the plaintiff had a licence. This submission is without merit. The disposal of the case was not on its merits. There was no trial. Further the basis on which the withdrawal was done has not been revealed. Rhetorically I ask if such withdrawal was on the basis of the presentation of a valid licence where is that licence? The other was by way of the submission that there had been an admission by the defendant on its pleadings that the plaintiff was at the relevant time a licensed

firearm holder. The following part of the defendant's pleadings in paragraph 4 is seized upon.

"The Defendant further states that the plaintiff failed to produce a valid firearm licence or give any indication that one had been issued to him prior to appearing before the Resident Magistrate."

This, in my view is not an admission as contended by the plaintiff. Not even the most imaginative construction could lead to a conclusion that the defendant was admitting that the plaintiff had a licence. Indication and reality are two different things. So there is no merit in this submission. It is somewhat curious that in the plaintiff's statement of claim at paragraph 8 (supra) it was not stated explicitly that at the Resident Magistrate's Court the plaintiff produced his licence.

Perhaps, en passant, I should make reference to Section 20(1) (b) of the Firearms Act which states: -

"A person shall not

- (a) .....
- (b) subject to subsection (2) be in possession of any other firearm or ammunition except under and in accordance with the terms and conditions of a Firearm's User's Licence.

Subsection (2) deals with exceptions. Section 20 (1) (b) on its proper construction places a persuasive burden of proof on the defendant. The statutory prohibition establishes what has been termed a negative averment. In

this instance it is for the person in possession of a firearm to produce his licence. See **R v. Elliot 24 JLR 291**.

In view of the fact that the plaintiff has not demonstrated that he had a firearm users licence his claims for damages in respect of false imprisonment and malicious prosecution are bound to fail.

I am fully aware that there are some conflicts in the accounts of the various witnesses. However it is unnecessary for a court to resolve every conflict, which arises on the evidence. What is imperative is for a court to deal decisively with those conflicts which are relevant to the issues which fall for determination. In this case, the critical issue is whether or not, at the material time the plaintiff was entitled to have in his possession a firearm. Any conflicts in evidence that do not touch or concern this central issue would be without significance. After some consideration, despite my fundamental approach, I think I need to make some comments.

In my view, this was a most unworthy attempt by the plaintiff to move a court of justice to deliver a judgment in his favour based on a calculated machiavellian posture. His veracity is certainly not to be applauded. These are instances (not necessarily all) where he disregarded the truth.

- (1) When he said at the scene of the accident he told Sgt. Williams there was a firearm in car. I find as a fact that the awareness of the presence of firearm was after the arrival at the station.



- (2) When he said that at the scene of the accident he handed Sgt. Williams his car papers and a copy of a firearm User's permit. I find as a fact that the documents produced by the plaintiff were at the police station.
- (3) That when the group from the accident arrived at the Linstead Police Station he was immediately put in a cage. I accept evidence to the contrary. He was not placed in the cage until after he was arrested and charged.
- (4) That he was taken to the station at the urging of Hutchinson – I accept the evidence of Sgt. Williams and Phillip Brown that the matter was taken to the station as normal police procedure.
- (5) That Cpl. Winfield Matthews spoke to him about the number of children Sgt. Williams was supposed to have fathered. This evidence was manufactured to give the impression that there was an effort to extort money from the plaintiff. The impression sought to be given by the plaintiff was that it was after the failed attempt to extort money from him that he was arrested and charged. I accept the evidence of Cpl. Matthews that no conversation as that recounted by the plaintiff ever took place.

It is not difficult to detect a uniformity of design in respect of these untruths. The object was to establish malice on the part of the police and to provide further evidence grounding the claim for aggravated and exemplary damages. In the witness box the plaintiff gave quite a histrionic display. At one time he broke down as he recounted his ordeal as to how he had come to Jamaica from the Turks and Caicos Islands to care for his dying mother. Having determined that the plaintiff has failed in respect of his claim for false imprisonment and malicious prosecution, I now turn to the claim for damages for assault. The claim for assault is distinct from those of false imprisonment

and malicious prosecution. No accused person should be assaulted. The plaintiff asserts that he was draped in the waist of his pants to the back. As far as I know and have seen, draping in this fashion is not an unusual method of restraining and carrying prisoners on foot. I find that this plaintiff was not draped. It is therefore unnecessary for me to determine if such a draping amounts to an assault. The claim for damages for assault therefore fails.

It is now only left for me pronounce that there is judgment for the Defendant. There will be costs to the defendant to be agreed or taxed.